IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW GENERATION COMPUTING, INC., **Plaintiff,** **v.** **PRG NOUVEAU, LLC, FRANK BROVENDER, ELIZABETH RYNISH, STELLA JMAL, and JAKE PLEETER** **Defendants.**	)	**No. ____________** **JURY TRIAL DEMANDED**

COMPLAINT

New Generation Computing, Inc., for its causes of action against Defendants PRG Nouveau, LLC, Frank Brovender, Elizabeth Rynish, Stella Jmal, and Jake Pleeter (collectively, "Defendants"), states as follows:

I. PARTIES

1. Plaintiff New Generation Computing, Inc. ("NGC" or "Plaintiff") is a corporation organized and existing under the laws of the State of Florida. NGC maintains its principal place of business at 14900 NW 79th Court, Miami Lakes, Florida 33016.

2. Upon information and belief, Defendant PRG Nouveau, LLC ("PRG") is a limited liability company organized and existing under the laws of the State of New York, with a principal place of business located at 20 West 33rd Street, 12th Floor, New York, New York 10001.

3. Upon information and belief, Defendant Frank Brovender ("Brovender") is a resident of the State of New Jersey. Upon information and belief, Brovender is the Chief Financial Officer of PRG.

4. Upon information and belief, Defendant Elizabeth Rynish ("Rynish") is a resident of the State of New Jersey. Upon information and belief, Rynish is the Director of Product Development of PRG.

5. Upon information and belief, Defendant Stella Jmal ("Jmal") is a resident of the State of New York. Upon information and belief, Jmal is the President of Product Development of PRG.

6. Upon information and belief, Defendant Jake Pleeter ("Pleeter") is a resident of the State of New York. Upon information and belief, Pleeter is the President of PRG.

II. NATURE OF THE ACTION

7. This is an action for copyright infringement in violation of the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 as it involves a federal question; under 28 U.S.C. § 1332 as the action is between citizens of different States, and the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of $75,000.00; and under 28 U.S.C. § 1338 as it involves claims under the Copyright Act, 17 U.S.C. § 101 *et seq.*

9. Upon information and belief, this Court has personal jurisdiction over Defendants because Defendants operate and conduct business within this District and maintain a principal business location at 20 West 33rd Street, 12th Floor, New York, New York 10001. Upon information and belief, this Court further has personal jurisdiction over Defendants based on

their continuous and systematic minimum contacts with residents of New York, through the distribution and sale of their goods and/or services in New York, because they regularly transact business in this District, and/or have offered products into interstate commerce through one or more interactive websites, and have caused injury in this District. Defendants, therefore, are present in this judicial district and transact business and solicit business in the State of New York, within this judicial district, and elsewhere.

10. Upon information and belief, this Court also has specific personal jurisdiction over Defendants based on the purposeful direction of their promotional and advertising activities and sales and offers for sale of their products to residents and customers in the State of New York.

11. Upon information and belief, this Court has specific personal jurisdiction under New York's long-arm statue, N.Y. CPLR § 302(a), because (1) Defendants have transacted business within New York; (2) Defendants have contracted anywhere to supply goods or services in New York; (3) Defendants have committed tortious acts within New York giving rise to this Complaint; (4) Defendants own, use, or possess real property situated within New York; and (5) jurisdiction based on Defendants' contacts with New York (including, but not limited to, operation of their business and/or sales of goods or services) is not inconsistent with the Constitution of the State of New York or the Constitution of the United States.

12. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(a), because a substantial part of the events or omissions giving rise to NGC's claims occurred in this District, including but not limited to the fact that PRG, upon information and belief, installed and used NGC's copyrighted software within the District, and Defendants or their agents may be found in this District and are subject to personal jurisdiction in New York.

13. This Court also has jurisdiction to enter injunctive relief pursuant to 17 U.S.C. § 502 and Fed. R. Civ. P. 65.

IV. FACTUAL BACKGROUND

A. NGC's Products And Services

14. NGC is a leading provider of software for apparel and fashion companies, including solutions for product lifecycle management, supply chain management, enterprise resource planning, and shop floor control.

15. NGC's software products and solutions help retailers and brands transform apparel design, production, and logistics by increasing profit margins, improving speed to market and product quality, and managing compliance and testing.

B. NGC's Copyrighted Content

16. NGC is the owner of the copyrights in certain software that NGC licenses to its customers.

17. The following modules are among the software that NGC licenses:

a. e-PLM;
b. e-RFQ & Bids;
c. e-PreProduction;
d. e-Pack;
e. e-Shipment Tracking;
f. e-Exceptions; and
g. e-Collaboration.

(Hereinafter the "NGC Software").

18. The NGC Software is subject of the following United States copyright registrations:

a. TX0006627451, TX0006566635, TX0006021293, TX0006627452, TXu001052928, and TX0006566636.

True and correct copies of the foregoing copyright registrations are attached hereto as collective **Exhibit 1.**

19. NGC developed the NGC Software through the investment of substantial dollars in resources, program development, and engineering time.

20. A copyright notice appears on a splash screen when the NGC Software is launched.

21. NGC is the owner of the entire rights, title, and interest in the copyrights to the NGC Software.

22. The NGC Software constitutes protectable, original, and copyrightable subject matter.

23. NGC owns a valid copyright in the NGC Software.

24. From time to time, NGC updates the NGC Software and issues a new version. Each new version of the NGC Software contains protectable, original works of authorship. NGC reserves the right to conduct discovery and assert additional claims based on any new versions and/or derivative works.

C. NGC's Software License And Services Agreement With Parigi Group

25. NGC licenses use of the NGC Software to its customers.

26. On or around August 31, 2007, NGC entered into a Software License and Services Agreement with Parigi Enterprises, LLC a/k/a Parigi Group ("Parigi") for use of the NGC Software (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit 2**.

27. Under the Agreement, NGC granted to Parigi a non-exclusive, non-transferable license, without right of sublicense, to use the NGC Software. *See* Exhibit 2, Order Form.

28. Upon information and belief, Parigi is the source of the NGC Software that PRG is using without authorization by NGC.

29. Parigi's Agreement limits use of the licensed NGC Software to no more than 150 authorized Parigi users or vendors ("Users") in exchange for payment of a discounted one-time license fee of $150,000. *Id.*

30. The Agreement provides that NGC may provide software support services to Parigi, to be purchased by Parigi on an annual basis (the "Support Services Agreement"). *Id.*; *see also* Exhibit 2, § 6.1.

31. The Agreement provides as follows:

2. LICENSE

2.1 Rights Granted. Subject to the terms and conditions of this Agreement, Company grants to Customer a non-exclusive, non-transferable license, without right of sublicense: to (i) install, display, and use the Software in object code format at the Installation Address and to use it remotely from the Installation Address over the internet solely to serve the Customer's internal operations (*e.g.*, not for service bureau or time sharing services) and *only* for the Scope of Use and Technical Environment stated on the relevant Order Form; and (ii) use the Documentation solely in connection with Customer's authorized use of the Software. The installation of the Software and Documentation is expressly limited to the Installation Address. The use of the Software is expressly limited to the Scope of Use specified on the applicable Order Form. No license to install the Software and Documentation at any other office, facility, location, or workstation, or to use it by any other user, is granted, intended or implied. Customer may make backup or archival copies of the Software and Documentation as may be reasonably required for normal business operation to be used only for the use specified under this Agreement, provided that all titles, trademarks, copyrights and restricted rights notices shall be reproduced in such copies.

If Customer wishes to increase the Scope of Use specified on an applicable Order Form, it must do so by notifying Company, executing a new Order Form, and paying the applicable additional license fee.

Exhibit 2, § 2.1.

32. The Agreement provides that "use of the Software is expressly limited to the Scope and Use specified on the applicable Order Form." *Id.*

33. The Agreement provides that "[n]o license to install the Software and Documentation at any other office, facility, location, or workstation, or to use it by any other user, is granted, intended or implied." *Id.*

34. NGC expressly retained all proprietary rights, including copyrights, in and to the NGC Software and accompanying documentation ("Documentation"), and any corrections, bug

fixes, enhancements, updates, or other modifications thereto, whether made by NGC or any third party. *See* Exhibit 2, § 5.1.

35. The Agreement provides that Parigi "does not acquire any rights, express or implied, in the Software and Documentation, other than those specified in this Agreement." *Id.*

36. The Agreement prohibits Parigi from copying or using the NGC Software or Documentation except as specified in the Agreement. *See* Exhibit 2, § 2.2.

37. The Agreement prohibits Parigi from reverse engineering, decompiling, or disassembling, in whole or in part, the NGC Software. *Id.*

38. The Agreement expressly prohibits Parigi from distributing, sublicensing, disclosing, renting, leasing, or otherwise transferring the NGC Software and Documentation, or any party thereof, to any third party. *Id.*

39. The Agreement also prohibits Parigi from using the NGC Software in any third-party training, time-sharing or service bureau arrangement. *Id.*

40. The Agreement provides that Parigi "agrees to take all reasonable steps to protect the Software and Documentation from unauthorized access, copying or use, and must immediately notify [NGC] of any actual or potential unauthorized use or access to the Software." Exhibit 2, § 5.2.

41. The Agreement provides that

> Neither this Agreement nor the Software, Deliverables or Documentation provided hereunder, may be assigned or transferred by Customer without the prior written consent of Company.

Exhibit 2, § 13.

42. Among other sections, Sections 2.2, 5, and 13 survive termination of the Agreement.

43. Upon information and belief, Parigi ceased all business in the regular course on or before May 1, 2016.

44. Upon information and belief, PRG was formed as a limited liability company on January 19, 2016.

45. Parigi and PRG are separate legal entities.

D. Defendants' Knowing, Intentional, And Willful Infringement Of The Copyrighted Content

1. PRG's Unauthorized Use Of The NGC Software

46. Since at least as early as May 1, 2016, PRG has unlawfully used NGC's proprietary and copyrighted works embodied in the NGC Software to conduct its business.

47. After Parigi ceased business operations but unknown to NGC, the NGC Software was installed on PRG's server, and PRG used the NGC Software licensed to Parigi.

48. PRG also submitted support request tickets to NGC under the guise of operating as Parigi. By means of example and not limitation, PRG submitted the following support request tickets to NGC:

a. Ticket No. 815155 submitted May 26, 2016, seeking support regarding an "email communication issue." A true and correct copy of Ticket No. 815155 is attached hereto as **Exhibit 3**.

b. Ticket No. 815156 submitted May 26, 2016, seeking support regarding an "issue generating thumbnails." A true and correct copy of Ticket No. 815156 is attached hereto as **Exhibit 4**.

c. Ticket No. 815157 submitted May 26, 2016, seeking support regarding a "problem downloading some artwork." A true and correct copy of Ticket No. 815157 is attached hereto as **Exhibit 5**.

d. Ticket No. 815276 submitted June 6, 2016, seeking support regarding an "Issue when Downloading Techpack PDFs." A true and correct copy of Ticket No. 815276 is attached hereto as **Exhibit 6**.

e. Ticket No. 815277 submitted June 6, 2016, seeking support regarding an issue with "VOFD – ERROR log." A true and correct copy of Ticket No. 815277 is attached hereto as **Exhibit 7**.

49. PRG is not a party to the Agreement.

50. PRG had not been formed as a legal entity at the time the Agreement was executed.

51. PRG is not an intended third-party beneficiary of the Agreement.

52. Parigi did not obtain prior written consent from NGC to assign the Agreement to PRG.

53. PRG's use of the NGC Software is not authorized and constitutes copyright infringement.

2. NGC's Discovery Of PRG's Infringement

54. On July 12, 2016, without knowledge of Parigi's cessation of business operations, NGC contacted Rynish regarding the upcoming expiration of Parigi's Support Services Agreement. A true and correct copy of the July 12, 2016 email correspondence is attached hereto as **Exhibit 8**.

55. Rynish did not notify NGC that Parigi had ceased operations. *Id.*

56. Rynish also did not notify NGC that PRG had commenced use of the NGC Software licensed to Parigi. *Id.*

57. During the process of communicating concerning renewing Parigi's Support Services Agreement, NGC learned that PRG was using the NGC software.

58. After learning of PRG's unauthorized use of the NGC Software licensed to Parigi, NGC engaged in discussions with Brovender, Rynish, and Jmal until December 2016 in an attempt to negotiate a new license agreement and license fee for PRG to cure its infringement.

59. On September 27, 2016, NGC requested information regarding PRG as part of negotiating a new license of the NGC Software to PRG. A true and correct copy of the September 27, 2016 email correspondence is attached hereto as **Exhibit 9**.

60. In response, Rynish provided the requested information and identified Jmal as the PRG official who would execute the license agreement. *Id.*

61. On October 11, 2016, NGC provided a proposed license agreement to Rynish that would have authorized PRG's use of the NGC Software. A true and correct copy of the October 11, 2016 email correspondence is attached hereto as **Exhibit 10**.

62. In response, Rynish stated that Jmal would return the following week and that she would respond at that time.

63. On October 27, 2016, NGC sent a follow up email to Rynish, reminding Rynish that the license agreement had not been executed and, as such, "you do not have legal rights to use the software." *Id.*

64. Rynish responded to NGC's October 27, 2016 email, stating that she is "Working on it asap!" *Id.*

65. Having yet to receive a signed license agreement, on November 9, 2016, NGC followed up with Rynish and Brovender again, stating that NGC "need[s] to know the path forward and need to wrap up the PRG Nouveau agreements[.]" A true and correct copy of the November 9, 2016 email correspondence is attached hereto as **Exhibit 11**.

66. In response, Brovender informed NGC for the first time that he needed approval from PRG's new president, Pleeter, prior to executing a license agreement to the NGC Software. *Id.*

67. On November 15, 2016, NGC contacted Brovender and Rynish regarding the license agreement, and stating that the agreement needed to be executed that day. A true and correct copy of the November 15, 2016 email correspondence is attached hereto as **Exhibit 12**.

68. In response, Brovender stated that he "[had] to wait for our president." *Id.*

69. On December 2, 2016, NGC sent a letter to PRG demanding execution of the license agreement and payment of the license fee on or before December 15, 2016, or alternatively demanding immediate cessation of all use and possession of the NGC Software by PRG. A true and correct copy of the December 2, 2016 letter is attached hereto as **Exhibit 13**.

70. On December 12, 2016, NGC contacted Rynish regarding the license agreement and December 2, 2016 letter. A true and correct copy of the December 12, 2016 email correspondence is attached hereto as **Exhibit 14**.

71. In response, Rynish stated that PRG's president was out of the office and that she would discuss the license agreement with him on December 13, 2016. *Id.*

72. NGC never received a response following the alleged December 13, 2016 meeting.

73. On January 3, 2017, NGC sent a second letter to PRG notifying PRG of its continued infringement of NGC's copyrighted works and demanding that PRG immediately cease and desist all use of the NGC Software and remove or otherwise delete all copies of the NGC Software in PRG's possession, or, in the alternative, immediately execute the proposed license agreement and pay the corresponding license fee. A true and correct copy of the January 3, 2017 letter is attached hereto as **Exhibit 15**.

74. NGC did not receive any response to the January 3, 2017 letter.

75. PRG did not execute any license agreement to use the NGC Software.

76. PRG has not paid any license fees to NGC to use the NGC Software.

77. Defendants' use of the NGC Software was, is, and continues to be without authorization and in violation of NGC's exclusive rights granted under the Copyright Act, 17 U.S.C. § 101 *et seq.*

78. NGC has not authorized Defendants to copy, reproduce, distribute, or use the NGC Software.

E. Harm To NGC

79. NGC and the exclusive rights granted to NGC by virtue of its copyright registration in the works embodied in the NGC Software have been damaged by Defendants' activities alleged herein.

80. PRG's infringement of NGC's copyrighted works embodied in the NGC Software has been, and continues to be, willful, wanton, egregious, and with disregard for Plaintiff's copyright rights and will continue to be unless enjoined by this Court.

81. Unless the future occurrence of these actions is enjoined, NGC will suffer irreparable injury for which there is no adequate remedy at law.

82. Upon information and belief, in his role as Chief Financial Officer of PRG and individually, Brovender was and is actively and personally involved in the wrongful acts giving rise to this action.

83. Upon information and belief, Brovender was and is a moving, active, conscious force behind Defendants' infringing use of the NGC Software.

84. Upon information and belief, Brovender personally took part in, ratified and/or directed others to engage in the infringing and/or wrongful activity. As a result, Brovender is personally liable for the wrongful acts he has committed as alleged herein. Further, as Chief

Financial Officer of PRG, Brovender has a direct financial interest in PRG and the right and ability to supervise PRG's activities, including the wrongful acts alleged herein.

85. Upon information and belief, Brovender knowingly, personally, and actively participated in, authorized, ordered, controlled, participated, approved, or ratified PRG's downloading, using, copying, reproducing, and/or distributing of unauthorized copies of the NGC Software.

86. Upon information and belief, Brovender directed, controlled, and/or ordered PRG's infringing use of the NGC Software.

87. Through his actions alleged herein, Brovender authorized, ordered, controlled, participated, and/or ratified PRG's acts of infringement of U.S. Copyright Registration Nos. TX0006627451, TX0006566635, TX0006021293, TX0006627452, TXu001052928, and TX0006566636.

88. Upon information and belief, Brovender also was personally involved in the decision to transfer use of the NGC Software from Parigi to PRG without NGC's prior written consent.

89. Therefore, Brovender, in his capacity as Chief Financial Officer of PRG, exercised control over PRG and its wrongful acts and is personally liable for his participation.

90. Upon information and belief, Brovender had and continues to have a direct financial interest in PRG's infringing use of the NGC Software.

91. Upon information and belief, in her role as Director of Product Development of PRG and individually, Rynish was and is actively and personally involved in the wrongful acts giving rise to this action.

92. Upon information and belief, Rynish was and is a moving, active, conscious force behind Defendants' infringing use of the NGC Software.

93. Upon information and belief, Rynish personally took part in, ratified and/or directed others to engage in the infringing and/or wrongful activity. As a result, Rynish is personally liable for the wrongful acts she has committed as alleged herein. Further, as Director of Product Development of PRG, Rynish has a direct financial interest in PRG and the right and ability to supervise PRG's activities, including the wrongful acts alleged herein.

94. Upon information and belief, Rynish knowingly, personally, and actively participated in, authorized, ordered, controlled, participated, approved, or ratified PRG's downloading, using, copying, reproducing, and/or distributing of unauthorized copies of the NGC Software.

95. Upon information and belief, Rynish directed, controlled, and/or ordered PRG's infringing use of the NGC Software.

96. Through her actions alleged herein, Rynish authorized, ordered, controlled, participated, and/or ratified PRG's acts of infringement of U.S. Copyright Registration Nos. TX0006627451, TX0006566635, TX0006021293, TX0006627452, TXu001052928, and TX0006566636.

97. Upon information and belief, Rynish also was personally involved in the decision to transfer use of the NGC Software from Parigi to PRG without NGC's prior written consent.

98. Therefore, Rynish, in her capacity as Director of Product Development of PRG, exercised control over PRG and its wrongful acts and is personally liable for her participation.

99. Upon information and belief, Rynish had and continues to have a direct financial interest in PRG's infringing use of the NGC Software.

100. Upon information and belief, in her role as President of Product Development of PRG and individually, Jmal was and is actively and personally involved in the wrongful acts giving rise to this action.

101. Upon information and belief, Jmal was and is a moving, active, conscious force behind Defendants' infringing use of the NGC Software.

102. Upon information and belief, Jmal personally took part in, ratified and/or directed others to engage in the infringing and/or wrongful activity. As a result, Jmal is personally liable for the wrongful acts she has committed as alleged herein. Further, as President of Product Development of PRG, Jmal has a direct financial interest in PRG and the right and ability to supervise PRG's activities, including the wrongful acts alleged herein.

103. Upon information and belief, Jmal knowingly, personally, and actively participated in, authorized, ordered, controlled, participated, approved, or ratified PRG's downloading, using, copying, reproducing, and/or distributing of unauthorized copies of the NGC Software.

104. Upon information and belief, Jmal directed, controlled, and/or ordered PRG's infringing use of the NGC Software.

105. Through her actions alleged herein, Jmal authorized, ordered, controlled, participated, and/or ratified PRG's acts of infringement of U.S. Copyright Registration Nos. TX0006627451, TX0006566635, TX0006021293, TX0006627452, TXu001052928, and TX0006566636.

106. Upon information and belief, Jmal also was personally involved in the decision to transfer use of the NGC Software from Parigi to PRG without NGC's prior written consent.

107. Therefore, Jmal, in her capacity as President of Product Development of PRG, exercised control over PRG and its wrongful acts and is personally liable for her participation.

108. Upon information and belief, Jmal had and continues to have a direct financial interest in PRG's infringing use of the NGC Software.

109. Upon information and belief, in his role as President of PRG and individually, Pleeter was and is actively and personally involved in the wrongful acts giving rise to this action.

110. Upon information and belief, Pleeter was and is a moving, active, conscious force behind Defendants' infringing use of the NGC Software.

111. Upon information and belief, Pleeter personally took part in, ratified and/or directed others to engage in the infringing and/or wrongful activity. As a result, Pleeter is personally liable for the wrongful acts he has committed as alleged herein. Further, as President of PRG, Pleeter has a direct financial interest in PRG and the right and ability to supervise PRG's activities, including the wrongful acts alleged herein.

112. Upon information and belief, Pleeter knowingly, personally, and actively participated in, authorized, ordered, controlled, participated, approved, or ratified PRG's downloading, using, copying, reproducing, and/or distributing of unauthorized copies of the NGC Software.

113. Upon information and belief, Pleeter directed, controlled, and/or ordered PRG's infringing use of the NGC Software.

114. Through his actions alleged herein, Pleeter authorized, ordered, controlled, participated, and/or ratified PRG's acts of infringement of U.S. Copyright Registration Nos. TX0006627451, TX0006566635, TX0006021293, TX0006627452, TXu001052928, and TX0006566636.

115. Upon information and belief, Pleeter also was personally involved in the decision to transfer use of the NGC Software from Parigi to PRG without NGC's prior written consent.

116. Therefore, Pleeter, in his capacity as President of PRG, exercised control over PRG and its wrongful acts and is personally liable for her participation.

117. Upon information and belief, Pleeter had and continues to have a direct financial interest in PRG's infringing use of the NGC Software.

V. CAUSES OF ACTION

COUNT I

DIRECT COPYRIGHT INFRINGEMENT
(*against all Defendants*)

118. NGC incorporates the preceding paragraphs as though fully set forth herein.

119. The NGC Software comprises original, protectable, and copyrightable subject matter under the Copyright Act.

120. NGC owns all right, title, and interest in and to the copyrights to the NGC Software.

121. Upon information and belief, Defendants had access to the NGC Software.

122. Defendants have infringed NGC's copyrights in the NGC Software by downloading, using, copying, reproducing, and/or distributing unauthorized copies of the NGC Software.

123. By their actions alleged above, Defendants have infringed and will continue to infringe NGC's copyright interests in the NGC Software.

124. Upon information and belief, Defendants' acts were committed with knowledge or in reckless disregard of NGC's exclusive rights in the NGC Software under the Federal Copyright Act.

125. Upon information and belief, Defendants' acts were committed willfully.

126. Upon information and belief, Brovender also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

127. Upon information and belief, Rynish also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

128. Upon information and belief, Jmal also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

129. Upon information and belief, Pleeter also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

130. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage NGC and cause it irreparable harm, for which NGC has no adequate remedy at law.

131. Defendants acts are and were knowing, willful, and/or made with reckless disregard for the copyright interests of NGC, thus entitling NGC to all available remedies provided by 17 U.S.C. § 501 *et seq.*, including but not limited to temporary, preliminary, and permanent injunctive relief; impoundment, disposition, and destruction of infringing copies of the NGC Software; any damages sustained by NGC; Defendants' profits; willful/treble damages; statutory damages; attorney fees and expenses; costs; pre-judgment interest; post-judgment interest; and other equitable relief.

COUNT II

CONTRIBUTORY COPYRIGHT INFRINGEMENT
(*against all Defendants*)

132. NGC incorporates the preceding paragraphs as though fully set forth herein.

133. The NGC Software comprises original, protectable, and copyrightable subject matter under the Copyright Act.

134. NGC owns all right, title, and interest in and to the copyrights to the NGC Software.

135. Upon information and belief, Defendants had access to the NGC Software.

136. Defendants have infringed NGC's copyrights in the NGC Software by downloading, using, copying, reproducing, and/or distributing unauthorized copies of the NGC Software.

137. By their actions alleged above, Defendants have infringed and will continue to infringe NGC's copyright interests in the NGC Software.

138. Upon information and belief, Defendants' acts were committed with knowledge or in reckless disregard of NGC's exclusive rights in the NGC Software under the Federal Copyright Act.

139. Upon information and belief, Defendants' acts were committed willfully.

140. Upon information and belief, with knowledge of the infringing activity, Defendants induced, caused, or materially contributed to the infringing conduct of others.

141. Upon information and belief, Defendants' acts alleged herein encouraged or assisted the infringement of NGC's copyrighted works embodied in the NGC Software.

142. Upon information and belief, Defendants engaged in contributory infringement by (1) intentionally inducing PRG and/or one or more third parties to use, copy, and distribute unauthorized copies of or otherwise infringe the NGC Software, and/or (2) supplying the NGC Software to PRG and/or one or more third parties with actual or constructive knowledge that distribution and use of the NGC Software was not licensed or authorized by NGC.

143. Upon information and belief, Brovender also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

144. Upon information and belief, Rynish also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

145. Upon information and belief, Jmal also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

146. Upon information and belief, Pleeter also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

147. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage NGC and cause it irreparable harm, for which NGC has no adequate remedy at law.

148. Defendants acts are and were knowing, willful, and/or made with reckless disregard for the copyright interests of NGC, thus entitling NGC to all available remedies provided by 17 U.S.C. § 501 *et seq.*, including but not limited to temporary, preliminary, and permanent injunctive relief; impoundment, disposition, and destruction of infringing copies of the NGC Software; any damages sustained by NGC; Defendants' profits; willful/treble damages; statutory damages; attorney fees and expenses; costs; pre-judgment interest; post-judgment interest; and other equitable relief.

COUNT III

INDUCEMENT OF COPYRIGHT INFRINGEMENT
(*against all Defendants*)

149. NGC incorporates the preceding paragraphs as though fully set forth herein.

150. The NGC Software comprises original, protectable, and copyrightable subject matter under the Copyright Act.

151. NGC owns all right, title, and interest in and to the copyrights to the NGC Software.

152. Upon information and belief, Defendants had access to the NGC Software.

153. Defendants have infringed NGC's copyrights in the NGC Software by downloading, using, copying, reproducing, and/or distributing unauthorized copies of the NGC Software.

154. By their actions alleged above, Defendants have infringed and will continue to infringe NGC's copyright interests in the NGC Software.

155. Upon information and belief, Defendants' acts were committed with knowledge or in reckless disregard of NGC's exclusive rights in the NGC Software under the Federal Copyright Act.

156. Upon information and belief, Defendants' acts were committed willfully.

157. Upon information and belief, Defendants have engaged in purposeful conduct that encouraged copyright infringement with the intent to encourage such infringement.

158. Upon information and belief, Defendants have engaged in induced copyright infringement by (1) intentionally inducing PRG and/or one or more third parties to use, copy, and distribute unauthorized copies of or otherwise infringe the NGC Software, and/or (2) supplying the NGC Software to PRG and/or one or more third parties with actual or constructive knowledge that distribution and use of the NGC Software was not licensed or authorized by NGC.

159. Upon information and belief, Brovender also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

160. Upon information and belief, Rynish also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

161. Upon information and belief, Jmal also is vicariously liable for any infringement by PRG and any other co-defendant because (1) she had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) she has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

162. Upon information and belief, Pleeter also is vicariously liable for any infringement by PRG and any other co-defendant because (1) he had the right, ability, and duty to supervise the activities of their agents in relation to the agent's infringing use of the NGC Software, and (2) he has and/or had a direct financial interest in the wrongful and unlawful exploitation of the infringing use of the NGC Software in the United States.

163. The aforementioned acts by Defendants have damaged and, if not enjoined, will continue to damage NGC and cause it irreparable harm, for which NGC has no adequate remedy at law.

164. Defendants acts are and were knowing, willful, and/or made with reckless disregard for the copyright interests of NGC, thus entitling NGC to all available remedies provided by 17 U.S.C. § 501 *et seq.*, including but not limited to temporary, preliminary, and permanent injunctive relief; impoundment, disposition, and destruction of infringing copies of the NGC Software; any damages sustained by NGC; Defendants' profits; willful/treble damages; statutory damages; attorney fees and expenses; costs; pre-judgment interest; post-judgment interest; and other equitable relief.

COUNT IV

ENTITLEMENT TO INJUNCTIVE RELIEF

165. NGC incorporates the preceding paragraphs as though fully set forth herein.

166. By reason of Defendants' acts alleged herein, NGC has and will suffer immeasurable, and thus irreparable, damage to its business and copyright interests.

167. Upon information and belief, Defendants intend to continue to do the acts complained of herein unless restrained and enjoined.

168. NGC's remedy at law is inadequate.

169. NGC is entitled to a preliminary and permanent injunction prohibiting Defendants, and their affiliates, agents, servants, and employees, and anyone acting with their authority or on their behalf, from directly or indirectly infringing NGC's copyright works embodied in NGC Software.

VI. REQUEST FOR RELIEF

WHEREFORE, NGC requests the following relief:

A. That judgment enter in favor of NGC against Defendants as to the each of above Counts and the relief requested therein;

B. That NGC be awarded all relief to which it is entitled under 17 U.S.C. § 101 *et seq.*;

C. That NGC be awarded (1) its actual damages incurred as a result of Defendants' acts of copyright infringement, and all profits Defendants realized as a result of their acts of copyright infringement, in amounts to be determined at trial; or (2) in the alternative, and upon NGC's election, award to NGC, pursuant to 17 U.S.C. § 504, statutory damages;

D. That NGC be awarded a judgment against Defendants for monetary damages based on Defendants' profits, NGC's damages, statutory damages, treble damages, punitive damages, attorney fees, litigation expenses, costs, pre-judgment interest, post-judgment interest, and other equitable relief;

E. That Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith preliminarily enjoined and restrained from directly or indirectly infringing NGC's copyrights in the NGC Software, or continuing to market, offer, sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop or manufacture any programs or products derived or copied from the NGC Software or participate or assist in any such activity, during the pendency of this civil action;

F. That Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith preliminarily enjoined and restrained from any further infringement of NGC's copyrights in the NGC Software;

G. That Defendants be directed to file with this Court and serve on NGC within thirty (30) days after the entry of a preliminary injunction, reports in writing under oath, setting forth in detail the manner and form in which Defendants have complied with the preliminary injunction;

H. At the conclusion of trial, that Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith permanently enjoined and restrained from directly or indirectly infringing NGC's copyrights in the NGC Software, or continuing to market, offer, sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop or manufacture any programs or products derived or copied from the NGC Software or participate or assist in any such activity;

I. At the conclusion of trial, that Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be forthwith permanently enjoined and restrained from any further infringement of NGC's copyrights in the NGC Software;

J. That Defendants be directed to file with this Court and serve on NGC within thirty (30) days after the entry of a permanent injunction, reports in writing under oath, setting forth in detail the manner and form in which Defendants have complied with the permanent injunction;

K. That the Court order impoundment of all copies, phonorecords, plates, molds, matrices, masters, tapes, film negatives, or other articles that infringe the copyrights in the NGC Software pursuant to 17 U.S.C. § 503;

L. That Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be directed to return to NGC any and all originals, copies, facsimiles, or duplicates of the NGC Software in their possession, custody or control;

M. That Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with any of the foregoing, be directed to return to NGC any and all originals, copies, facsimiles, or duplicates of any infringing program or product incorporating the NGC Software in their possession, custody or control;

N. That Defendants be directed to deliver up and destroy all devices, products, literature, advertising and any other material incorporating or containing infringing copies of the NGC Software;

O. That NGC be awarded such other and further relief as this Court deems just and proper.

JURY DEMAND

A trial by jury is hereby demanded for all issues so triable.

Dated: May 23, 2017
New York, NY

Respectfully submitted,

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